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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

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Robert G. Burnley
Director

Francis L. Daniel
Tidewater Regional Director
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VIRGINIA WASTE MANAGEMENT BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO Oceana Salvage, Inc.

SECTION A: Purpose

This is a consent order issued under the authority of Va. Code §§ 10.1-1182 *et seq.*, 10.1-1402, 10.1-1405, and 10.1-1455 between the Department of Environmental Quality and Oceana Salvage, Inc., for the purpose of resolving certain violations of the Virginia Waste Management Act, the Virginia Hazardous Waste Management Regulations, and the Virginia Solid Waste Management Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Code" means the Code of Virginia (1950), as amended.
2. "Board" means the Virginia Waste Management Board, a permanent collegial body of the Commonwealth of Virginia as described in Code §§ 10.1-1401 and 10.1-1184.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Tidewater Regional Office of the Department.
6. "Order" means this document, also known as a consent order.
7. "VSWMR" means the Virginia Solid Waste Management Regulations (9 VAC 20-

80-10 *et seq.*)

8. "Regulations" means the Virginia Hazardous Waste Management Regulations, 9 VAC 20-60-12 *et seq.* ("VHWMR") The specific provisions of Title 40 of the Code of Federal Regulations ("CFR") cited herein are incorporated by reference at 9 VAC 20-60-260, 9 VAC 20-60-261, 9 VAC 20-60-262, 9 VAC 20-60-264, 9 VAC 20-60-265, 9 VAC 20-60-268, and 9 VAC 20-60-270.
9. "Oceana" means Oceana Salvage, Inc.

SECTION C: Findings of Facts and Conclusions of Law

1. Oceana Salvage, Inc. owns and operates a salvage yard located at 1040 Oceana Boulevard, Virginia Beach, Virginia. Oceana does not have a permit from the Director to store or dispose of solid and/or hazardous waste.

2. On October 24, 1997, Mr. Rodney M. Malbon, Jr., previous owner of Oceana, entered into a consent order with the Department addressing the cleanup of buried lead acid batteries and lead contaminated soils on the adjacent property owned by the U.S. Navy in accordance with the VSWMR and the cleanup and closure of a hazardous waste pile on the U.S. Navy property and a hazardous waste pile on the Oceana property in accordance with the VHWMR, among other things. The following applies to the buried batteries and generation of the waste piles addressed in the 1997 consent order:

a. Mr. Malbon informed the Department that he had inadvertently placed and/or buried lead acid batteries on Navy property adjacent to Oceana property. Mr. Malbon removed some of the batteries and battery casings between 1993 and 1995; however, a site inspection conducted November 11, 1997 revealed batteries and casings remain buried on the Navy property (hereinafter referred to as Burial Unit #1). Reportedly, the lead acid batteries were buried on Navy property prior to the enactment of RCRA Subtitle C. Therefore, citations regarding violations and cleanup requirements of Burial Unit #1 refer to the VSWMR. Mr. Malbon stored and disposed of solid waste without a permit from the Director in violation of 9 VAC 20-80-90.A.1.

b. Between August 1993 and October 1995, the batteries and contaminated soil were excavated from the Navy property and piled, without proper containment, adjacent to the excavated area (hereinafter referred to as Waste Pile #1). Oceana accumulated hazardous waste without meeting the provision of 40 CFR 262.34 and without complying with the applicable standards and permit requirements set forth in 40 CFR 264 and 265.

c. In November 1995, hazardous waste, consisting of the battery tailings and contaminated soil excavated from the Navy property, was stored on Oceana property greater than

ninety days (hereinafter referred to as Waste Pile #2). Oceana accumulated hazardous waste without meeting the provision of 40 CFR 262.34 and without complying with the applicable standards and permit requirements set forth in 40 CFR 264 and 265.

3. In January 1997, the Navy conducted soil analyses in the original disposal area on the Navy property. These results indicate elevated levels of leachable lead exist in the soil.

4. Cleanup and closure of the solid and hazardous waste units identified above was not completed in accordance with the 1997 consent order. Upon Mr. Malbon's decease on August 31, 2001, Oceana has indicated it's willingness to complete the cleanup and closure of the solid and hazardous waste units.

SECTION D: Agreement and Order

Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1-1455 (F), orders and Oceana, and Oceana agrees, to perform the actions described in Appendix A of this Order.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Oceana for good cause shown by Oceana or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Oceana admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Oceana declares it has received fair and due process under the Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the Virginia Waste Management Act, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
5. Failure by Oceana to comply with any of the terms of this Order shall constitute a

violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.

6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. Oceana shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Oceana must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Oceana shall notify the Director and the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director and the Director of the Regional Office within 24 hours of learning of any condition listed above, which Oceana intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
9. This Order shall continue in effect until Oceana petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Oceana from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

10. This Order shall become effective upon execution by both the Director or his designee and Oceana.

Francis L. Daniel

Francis L. Daniel for Robert G. Burnley, Director
Department of Environmental Quality

July 30, 2007
Date

Seen and Agreed to:

Commonwealth of Virginia
City of Virginia Beach

The foregoing instrument was acknowledged before me this 7 day of May, 2002.

2002, by Henry C. Lyong, who is Vice President of Oceana, on behalf of
the Corporation.

Dee H. Warden

Notary Public

5/7/02

Date

My commission expires: 11/30/2004

(Seal)

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Oceana shall not own, operate, construct, or modify any solid or hazardous waste facility within the Commonwealth, except in accordance with the Waste Management Act, the VSWMR, the VHWMR, a permit issued by the director, or an order of the Board.
2. Oceana shall complete solid waste removal and cleanup of Burial Unit #1 in accordance with 9 VAC 20-80-210. Within 30 days of the effective date of this Order, a remedial action plan for the battery tailings, lead contaminated soil, and other buried wastes contained in Burial Unit #1 on the Navy property shall be submitted to the Department for approval. The plan must at minimum specify the removal timeframe, determination if the removed waste is a hazardous waste, proposed method of waste disposal, a soil sampling and analysis plan, a groundwater sampling and analysis plan (if not addressed in Paragraph 5, below), and a completion schedule. Plan modifications (if required) must be completed within 15 days of receipt of Department comments.
3. The Department shall approve, or modify and approve, the remedial action plan submitted pursuant to Paragraph 2 above in accordance with the VHWMR and the VSWMR. Oceana shall implement and complete site cleanup of Burial Unit #1 in accordance with the approved compliance action plan.
4. Within 90 days of the effective date of this Order a closure plan and post closure plan for Waste Pile #1 on the Navy property (created from the initial excavation) and Waste Pile #2 located on the Oceana property must be submitted to the Department in accordance with 40 CFR 264.258. Plan modifications (if required) must be completed within 15 days of receipt of Department comments.
5. Within 90 days of the effective date of this Order a groundwater monitoring plan for Waste Pile #1 on the Navy property and Waste Pile #2 on the Oceana property must be submitted to the Department in accordance with 40 CFR 264 Subpart F. This groundwater monitoring plan may also incorporate the groundwater monitoring requirements addresses in Paragraph 2 above for Burial Unit #1. Plan modifications (if required) must be completed within 15 days of receipt of Department comments.
6. The Department shall approve, or modify and approve, the closure and post closure plans submitted pursuant to Paragraph 4 above and the groundwater monitoring plan submitted pursuant to Paragraph 5 above in accordance with the VHWMR. Oceana shall implement the plans upon approval.

7. Within 90 days of the effective date of this Order, evidence of financial assurance for the Waste Pile #1 and #2 must be submitted to the Department. Financial assurance shall be prepared in accordance with 40 CFR 264 Subpart H and consist of evidence of liability coverage and a financial mechanism in the amount of the closure and post-closure cost estimate. Within 30 days of receipt of the Department's approval of the closure plan, a revised financial mechanism in the amount of the approved estimate shall be provided to the Department.

8. Original financial assurance documentation, as required by Paragraph 7 above, shall be forwarded directly to Renee Hooper, Office of Financial Assurance, Virginia Department of Environmental Quality, P.O. Box 10009, Richmond, Virginia 23240-0009. All other submittals required by this Order shall be forwarded to Francis L. Daniel, Regional Director, Tidewater Regional Office, Department of Environmental Quality, 5636 Southern Boulevard, Virginia Beach, Virginia 23462.